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APPLICATION NO.	RECEIVED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,234	04/18/2001	David Klug	88265-4026	1401
28765	7590	03/04/2002	EXAMINER	
WINSTON & STRAWN 200 PARK AVENUE NEW YORK, NY 10166-4193			TRAN LIEN, THUY	
ART UNIT		PAPER NUMBER		
1761				8
DATE MAILED: 03/04/2002				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. 09/837,234	Applicant(s) Klug et al.
Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on Dec. 10, 2001
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1 and 3-19 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7      20)  Other: \_\_\_\_\_

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1. Claims 3 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

~~A weight of between about 5 and 40 g is not disclosed in the specification.~~

2. Claims 1 and 3-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs et al for the same reason set forth in paragraph 6 of the previous office action.
3. In the response filed Dec. 10, 2001, applicant argues most of the fillings disclosed by Biggs et al are not fat-based confectionery products and none are introduced into the sugar wafer cone from a molten, semi-liquid or semi-solid state that solidifies prior to consumption. This argument is not persuasive. While Biggs et al do disclose fillings that are not fat-based confectionery products, they also disclose chocolate pieces which are fat-based confectionery products. As to the form in which the filling is inserted, this would have been a matter of preference. Biggs et al disclose ice cream as one of the filling material; thus, it is obvious filling in molten, semi-liquid or semi-solid state can be used. The selection of the state of the filling or the type of filling would have been a matter of choice. Applicant also argues Biggs et al do not disclose that the cone acts as a handle to keep a user's hands clean. The Biggs et al product is a wafer having a filling inside and the filling can be any desired ingredients. The wafer will keep the filling away from the user's hand whether or not it is disclosed as such. While Biggs et al disclose ice cream, they also disclose any desired ingredients can be used as the filling material. The selection

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of the type of filling is an obvious matter of choice depending on the taste and flavor desired. If it is desired to have a semi-solid filling, it would have been obvious to have semi-solid filling. Biggs et al do not restrict the filling to any specific material. As to the size, it would have been obvious to make the product in any size desired. It would also have been obvious to include a topping to have different flavor and taste. ~~Biggs et al disclose on column 2 that a coating may be applied~~ to the product covering the part of the food core that is not covered by the wafer.

4. Applicant's arguments filed Dec. 10, 2001 have been fully considered but they are not persuasive.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can

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normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

February 27, 2002

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1701